

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

MISSISSIPPI ASSOCIATION OF HEALTH PLANS, INC. PLAINTIFF

VERSUS CAUSE NO. 3:24CV379-HTW-LGI

MIKE CHANEY, IN HIS OFFICIAL DEFENDANT
CAPACITY AS COMMISSIONER OF
INSURANCE OF MISSISSIPPI

**MISSISSIPPI AMBULANCE ALLIANCE’S REPLY TO MISSISSIPPI
ASSOCIATION OF HEALTH PLANS, INC.’S RESPONSE IN OPPOSITION
TO MISSISSIPPI AMBULANCE ALLIANCE’S MOTION FOR LEAVE TO
FILE *AMICUS CURIAE BRIEF***

COMES NOW, MISSISSIPPI AMBULANCE ALLIANCE, hereinafter
“*Proposed Amic*” or “MAA”, and files its *Reply to Mississippi Association of Health
Plans, Inc.’s Response in Opposition to Mississippi Ambulance Alliance’s Motion for
Leave to File Amicus Curiae Brief* and states, as follows:

1. The allegations of paragraph one of the *Response* are accurately stated
to the extent they indicate that MAA filed its *Motion for Leave to File Amicus Brief*
on August 22, 2024.

2. The allegations of paragraph two of the *Response* are accurately stated
to the extent that they indicate that the plaintiff, MISSISSIPPI ASSOCIATION OF
HEALTH PLANS, INC., hereinafter “MAHP,” has not consented to MAA’s request
to file an amicus brief in this matter, despite the fact that MAA’s requested their
consent prior to filing its *Motion for Leave to File Amicus Brief*.

3. The allegations of paragraph three of the *Response* are expressly denied and strict proof is demanded. The *Amicus Brief* provides unique insight into the legislative intent of HB 1489 and the ultimate effect HB 1489 has on the ability of MAA members to continue to provide high-quality and efficient pre-hospital care to Mississippi residents. This information would greatly assist the Court in its evaluation of this case.

4. The allegations of paragraph four of the *Response* are accurately stated to the extent they indicate that MAHP's *Motion for Preliminary Injunction* is set for hearing on September 13, 2024. The remaining allegations are expressly denied, and strict proof is demanded. The *Motion for Leave to File Amicus Brief* was filed on August 22, 2024, and the parties, on August 27, 2024, agreed to set the *Motion for Preliminary Injunction* for hearing on September 13, 2024. MAHP agreed to the hearing date with full knowledge that MAA had filed its *Amicus Brief* and as such, is now being disingenuous by arguing that their desire to file a responsive brief would delay the Court's ruling on their request for a preliminary injunction. MAHP's desire to file a responsive brief is discretionary and not required by federal law. MAA is prohibited by federal law from filing any rebuttal brief in this matter. As such, MAA is prohibited from taking any action that would delay this Honorable Court's ruling on the *Motion for Preliminary Injunction*. Any delay in the ruling would be caused solely by MAHP.

Furthermore, the *Motion for Leave to File Amicus Brief* was not filed nor designed to cause a delay in the Court's ruling on the preliminary injunction but

rather intends to provide this Court with a balanced view of the impact of HB 1489 not only on MAHP members but also its impact on ambulance service providers.

5. The allegations of paragraph five of the *Response* are expressly denied and strict proof is demanded. The intention of MAA's request for leave to file its amicus brief is simply an effort to present this Honorable Court with a complete picture of the interworking of HB 1489, its journey to existence, its purpose, and the ultimate effect it has on the quality of pre-hospital care that Mississippi residents receive from state ambulance service providers and Emergency Management Systems, hereinafter "*EMS*," services in the State of Mississippi.

Without input from the MAA, this Court cannot fairly assess the potential ramifications of its ruling on MAA, an association whose current membership provides emergency medical services to 80% of Mississippi's population. The *Amicus Brief* offers unique information that has not been provided by either party regarding the far-reaching effects that this Court's ruling would have on MAA members and ultimately, the level of care available to Mississippi citizens.

6. The allegations of paragraph six of the *Response* are expressly denied and strict proof is demanded. MAHP represents health insurers, the entities responsible for paying MAA members for services set forth in HB 1489. Without the benefit of MAA's perspective, the entities that would be negatively impacted by MAHP'S failure to comply with HB 1489, this Honorable Court would be at a disadvantage because the defendant, Commissioner Mike Chaney, cannot adequately argue the effect of noncompliance with HB 1489 would have on MAA

members and ultimately Mississippi citizens. MAA has superior knowledge regarding the billing procedures of its members and the effects of its noncompliance with HB 1489. Further, MAA is uniquely positioned to address the impact of years of MAHP's members' non-payment and its ultimate impact on Mississippi and its Emergency Management Systems.

7. The allegations of paragraph seven of the *Response* are expressly denied and strict proof is demanded.

8. The allegations of paragraph eight of the *Response* do not require a response. To the extent that a response is required, the allegations are expressly denied, and strict proof is demanded. MAA adopts and incorporates by reference, as if fully set forth herein, the references, arguments, and authorities set forth in its *Memorandum Brief in Support of its Reply to the Response in Opposition to the Mississippi Ambulance Alliance's Motion for File Amicus Brief*, being filed contemporaneously with this *Reply*.

9. The allegations of paragraph nine of the *Response* are expressly denied and strict proof is demanded. For the reasons set forth herein, this Honorable Court should grant the *Motion for Leave to File Amicus Brief*.

WHEREFORE, PREMISES CONSIDERED, proposed *Amici*, Mississippi Ambulance Alliance, respectfully requests this Honorable Court grant the *Motion to File Amicus Brief* and grant any such other general relief to which the *Amici* is entitled.

RESPECTFULLY SUBMITTED, this the 4th day of September, 2024.

MISSISSIPPI AMBULANCE ALLIANCE,
PROPOSED *AMICI*

BY: /s/ Amanda Alexander
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CERTIFICATE OF SERVICE

I, AMANDA ALEXANDER, counsel for proposed *Amici*, Mississippi Ambulance Alliance, certify that on September 4, 2024, I electronically filed the foregoing with the Clerk of the Court using the *ECF* system that sent notification of such filing to all counsel of record.

/s/ Amanda Alexander
AMANDA ALEXANDER

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

MISSISSIPPI ASSOCIATION OF HEALTH PLANS, INC. PLAINTIFF

VERSUS CAUSE NO. 3:24CV379-HTW-LGI

MIKE CHANEY, IN HIS OFFICIAL DEFENDANT
CAPACITY AS COMMISSIONER OF
INSURANCE OF MISSISSIPPI

**MISSISSIPPI AMBULANCE ALLIANCE'S MEMORANDUM BRIEF IN
SUPPORT OF ITS REPLY TO THE RESPONSE IN OPPOSITION TO
MISSISSIPPI AMBULANCE ALLIANCE'S MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF FILED BY PLAINTIFF, MISSISSIPPI
ASSOCIATION OF HEALTH PLANS, INC.**

COMES NOW, MISSISSIPPI AMBULANCE ALLIANCE, hereinafter
“*Proposed Amici*” or “MAA”, and files its *Memorandum Brief in Support of its Reply
to the Response in Opposition to Mississippi Ambulance Alliance's Motion for Leave
to File Amicus Curiae Brief* filed by the plaintiff, Mississippi Association of Health
Plans, Inc., and states, as follows:

BACKGROUND INFORMATION

The proposed *Amici*, Mississippi Ambulance Alliance, an association
comprised of ambulance providers doing business in the State of Mississippi, timely
filed its *Motion for Leave to File Amicus Curiae Brief* on August 22, 2024. The
Amicus Brief provides unique insight into the legislative intent behind HB 1489 and
the ultimate effect HB 1489 has on the ability of MAA members to continue to
provide high-quality and efficient pre-hospital care to Mississippi residents. This
information would greatly assist the Court in its evaluation of this case.

ARGUMENT

“A non-party may submit a brief as an *amicus curiae* in order to assist the court in reaching a proper decision.” *Republican Nat'l Comm. v. Wetzel*, No. 1:24CV25-LG-RPM, 2024 WL 988383, at *5 (S.D. Miss. Mar. 7, 2024) (citing *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008)). District courts frequently welcome amicus briefs from non-parties concerning legal issues that have potential ramifications beyond the parties directly involved or if the amicus has “*unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.*” *Cobell v. Norton*, 246 F.Supp.2d 59, 62 (D.D.C.2003)(quoting *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1064 (7th Cir.1997)).

District courts should look to Federal Rule of Appellate Procedure 29 for guidance concerning the standards for filing an amicus brief. *Id.* “*Whether to permit a nonparty to submit a brief, as amicus curiae, is, with immaterial exceptions, a matter of judicial grace.*” *In re Halo Wireless, Inc.*, 684 F.3d 581, 596 (5th Cir. 2012)(citing *Nat'l Org. for Women, Inc. v. Scheidler*, 223 F.3d 615, 616 (7th Cir. 2000)).

The Fifth Circuit, in *Lefebure v. D'Aquilla*, 15 F.4th 670, 675 (5th Cir. 2021), when discussing the purpose and viability of amicus briefs, reasoned as follows:

So courts should welcome amicus briefs for one simple reason: “[I]t is for the honour of a court of justice to avoid error in their judgments.” *The Protector v. Geering*, 145 Eng. Rep. 394 (K.B. 1686). As Judge Higginbotham wrote in his *American College of Obstetricians* dissent, “*even in a court as learned as ours, we might be able to avoid some unnecessary catastrophes if we have the will and the patience to listen.*” 699 F.2d at 647. Then-Judge Alito put it this way: “[A]n amicus who

makes a strong but responsible presentation in support of a party can truly serve as the court's friend.” Neonatology Associates, 293 F.3d at 131.

The Court further noted that if an irrelevant or unhelpful amicus brief is filed, the court, “*after studying the case, will often be able to make that determination without much trouble and can then simply disregard the amicus brief.” Lefebure v. D'Aquilla, 15 F.4th 670, 676 (5th Cir. 2021)(citing Neonatology Associates, P.A. v. Comm'r of Internal Revenue, 293 F.3d 128, 133 (3rd Cir. 2002)).* On the contrary, if a helpful brief is rejected, the court “*will be deprived of a resource that might have been of assistance.”* As such, courts are “*well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29’s criteria as broadly interpreted.” Id.*

A. *The filing of the Amicus Brief would not delay the Court’s ruling regarding the request for preliminary injunction.*

The *Motion for Leave to File Amicus Curiae Brief* filed by MAA was timely filed, and there is no requirement under the Federal Rules of Appellate Procedure that the plaintiff, MISSISSIPPI ASSOCIATION OF HEALTH PLANS, INC., hereinafter “*MAHP,*” file a brief in opposition of the *Amicus Brief*. To the extent MAHP seeks to file a responsive brief, any delays caused by their filing of a responsive brief are the result of and solely caused by their action as they are not required to file a responsive brief.

The *Motion for Leave to File Amicus Brief* was filed on August 22, 2024, and the parties, on August 27, 2024, agreed to set the *Motion for Preliminary Injunction*

for hearing on September 13, 2024. MAHP agreed to the hearing date as aware of the proposed filing days prior with full knowledge that MAA had filed its *Motion for Leave to File Amicus Brief*, to which the *Amicus Brief* is attached. As such, MAHP is disingenuous by now arguing that their desire to file an unnecessary responsive brief would delay the Court's ruling on their request for a preliminary injunction. As it now stands, MAHP has approximately ten (10) days from now to the hearing date to prepare any responsive brief or oral arguments in opposition to the *Amicus Brief*.

MAA had seven (7) days after the defendant, Commissioner Mike Chaney, filed his response in opposition to the *Motion for Preliminary Injunction* to file its *Motion for Leave to File Amicus Brief*, ten days is ample time for MAHP to prepare any responsive brief or oral arguments in opposition of the *Amicus Brief*. Federal Rule of Appellate Procedure 29 prohibits MAA from filing a rebuttal brief. As such, MAA is prohibited from taking any action that would delay this Honorable Court's ruling on the *Motion for Preliminary Injunction*. Any delay in the ruling would be caused solely by MAHP. Therefore, this Court should disregard MAHP's assertion that the filing of the *Amicus Brief* would delay the Court's ruling on their request for preliminary injunction.

Furthermore, the *Motion for Leave to File Amicus Brief* was not filed nor designed to cause a delay in the Court's ruling on the preliminary injunction but

rather intends to provide this Court with a balanced view of the impact of HB 1489 on ambulance service providers and MHAP members.

- B. ***The Amicus Brief would assist the Court in its ruling on the Motion for Preliminary Injunction because it offers unique insight into how HB 1489 ensures that Mississippi residents will continue to receive high-quality and efficient pre-hospital care from MAA members.***

MAHP presumptuously argues that the *Amicus Brief* would not aid this Court in addressing the issues raised in the *Motion for Preliminary Injunction*. According to the Seventh Circuit, district courts should frequently welcome amicus briefs from non-parties concerning legal issues that have potential ramifications beyond the parties directly involved or if the amicus has “*unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.*” *Cobell v. Norton*, 246 F.Supp.2d 59, 62 (D.D.C.2003) (quoting *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1064 (7th Cir.1997)). The intention of MAA’s request for leave to file its amicus brief is simply an effort to present to this Honorable Court a complete picture of the interworking of HB 1489, its journey to existence, its purpose, and the ultimate effect it has on the quality of pre-hospital care that Mississippi residents receive from state ambulance service providers and Emergency Management Systems, hereinafter “*EMS*,” services in the State of Mississippi.

Without input from MAA, this Court cannot fairly assess the potential ramifications of its ruling on MAA, whose current membership provides emergency

medical services to 80% of Mississippi's population. In sum, the *Amicus Brief* offers unique information that has not been provided by either party regarding the long-reaching effects that this Court's ruling would have on MAA members, the EMS industry, and, ultimately, the level of care available to Mississippi residents.

Furthermore, MAHP has taken the position that it was surprised by the enactment of HB 1489 and is somehow being victimized by a statute that it had ample opportunity to lobby against and/or voice its objection to the statutory language, a process that they have previously utilized and even achieved success in their efforts to influence statutory language and requirements that affect the health insurance industry. HB 1489 was introduced on February 19, 2024, unanimously passed, and approved by the Governor on May 2, 2024. Like most bills, the opportunity for comments from the public was afforded throughout the legislative process.

Upon information and belief, MAHP never lobbied against or voiced any objection or concerns regarding HB 1489. Now, MAHP is attempting to use this Court to remedy its failure to present its concerns to the Mississippi Legislature. MAHP is fighting the *Motion for Leave to File Amicus Brief* because the *Amicus Brief* provides a clear picture of why HB 1489 was enacted and the tangible effect that the statute has on MAA members and ultimately, the level of care available to Mississippi residents.

MAA's expert witness, Tracy Wold, and other MAA members were present when the Mississippi Legislature heard comments from the public regarding HB 1489. As such, MAA offers this Court a perspective different from Commissioner Chaney, as he did not participate in the legislative process. Although MAA is aligned with Commissioner Chaney's opposition to the requested injunctive relief, Commissioner Chaney has no personal knowledge of the testimony provided at the legislative hearings regarding HB 1489 and cannot offer insight on the MAHP members' historic failure to fairly compensate ambulance service providers for services performed and the ultimate effect on EMS.

To the extent that MAHP argues that the *Amicus Brief* is self-serving, it can be no more self-serving than MAHP's attempt to use this Court to remedy its failure to actively participate in the legislative process that ultimately led to the unanimous vote and final enactment of HB 1489. Contrary to MAHP's frivolous argument, the *Amicus Brief* aims to provide this Court with a balanced view of the effects of HB 1489 on MAA members and their ability to provide quality services to Mississippi residents.

Lastly, MAHP argues that the *Amicus Brief* would not assist the Court in its decision on the preliminary injunction because MAA, like Commissioner Mike Chaney, argues that the request for preliminary injunction should be denied because MAHP claims are not ripe for adjudication as they are based on future events that may not occur. To the extent that both Commissioner Chaney and MAA

argue that MAHP's claims are not ripe for adjudication, MAA's arguments are supported by different affidavits, documents and business records than those presented by Commissioner Chaney. While compelling documents were filed by Commissioner Chaney, a cursory review of the proposed *Amicus Brief* makes it clear that MAA presented affidavits, documents, and business records presented by Commissioner Chaney. As such, the *Amicus Brief* offers a distinctly different perspective as to whether MAHP's claims are ripe for adjudication that should be considered by this Court.

Among many other failures of acknowledgments, MAHP fails to acknowledge that this Honorable Court, applying *Lefebure*, may disregard the *Amicus Brief* if it proves unhelpful. According to *Lefebure*, this Honorable Court is more than capable of making a determination as to the usefulness of an amicus brief “*without much trouble and can then simply disregard the amicus brief [if it finds the brief to be unhelpful].*” *Lefebure v. D'Aquilla*, 15 F.4th 670, 676 (5th Cir. 2021) (citing *Neonatology Associates, P.A. v. Comm'r of Internal Revenue*, 293 F.3d 128, 133 (3rd Cir. 2002)). On the contrary, if a helpful brief is rejected, this Court “*will be deprived of a resource that might have been of assistance.*” *Id.*

Applying the principles of *Lefebure*, this Honorable Court should grant the *Motion for Leave to file Amicus Brief*. MAHP represents health insurance providers and brokers, the entities responsible for paying MAA members for services set forth in HB 1489. Without the benefit of MAA's perspective, the entities that would be

negatively impacted by MAHP'S failure to comply with HB 1489, this Honorable Court would be at a disadvantage as Commissioner Chaney cannot adequately set forth the effect of noncompliance with HB 1489, and its impact on members of MAA. MAA has superior knowledge regarding the billing procedures of its members and the effects of its noncompliance with HB 1489. Further, MAA is uniquely positioned to address the impact of years of MAHP's members' non-payment and its ultimate impact on Mississippi and EMS.

As such, this Court should grant the *Motion for Leave to File Amicus Brief*. Without consideration of the MAA's unique position, many unfavorable positions for MAHP and arguments which support the denial of the preliminary injunction may be omitted, intentionally or otherwise. For example, MAHP is not likely to openly share the following:

- (1) Despite the presence of MAHP's members' lobbyists in the public hearings, it simply failed to voice any objections to HB 1489;
- (2) MAHP is not likely to admit that for years they have not paid ambulance providers for services rendered, despite many providers' efforts to address the availability of healthcare in rural areas;
- (3) MAHP is not likely to openly admit that they have historically failed to negotiate rates with MAA's members but instead issued unilateral payments for services rendered, even for out-of-network services;
- (4) MAHP is not likely to openly disclose that surrounding states with similar statutes are implementing the same processes without incident or contest of statutory constitutionality;

- (5) MAHP is not likely to admit that surrounding states are implementing programs without any concerns of vagueness or ambiguity;
- (6) MAHP is not likely to share that in other states, there have been negotiations between ambulance providers and insurance providers to address the issue of fair compensation and reasonable rates without jeopardizing quality pre-hospital care for their residents yet balancing insurance providers' concerns about statutory percentages that might impact the rates to its members;
- (7) MAHP is not likely to admit that despite its passage and enactment of July 1, 2024, as recently as this filing, MAHP members are currently not in compliance with HB1489 and have denied billing for services provided by members of MAA; and
- (8) Finally, MAHP is not likely to admit that MAHP's members failed to voice any objections in the public hearings or have any member of the House, Senate, or Governor's office consider opposition to this unanimous enactment of the statute.

Considering the unique perspective provided by MAA, this Honorable Court should grant the *Motion for Leave to File Amicus Brief*.

CONCLUSION

The *Amicus Brief* would provide this Court with a balanced view of the effect of HB 1489, and as such, this Court should grant the *Motion for Leave to File Amicus Brief*.

RESPECTFULLY SUBMITTED, this the 4th day of September, 2024.

MISSISSIPPI AMBULANCE ALLIANCE,
PROPOSED *AMICI*

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CERTIFICATE OF SERVICE

I, AMANDA ALEXANDER, counsel for proposed *Amici*, Mississippi Ambulance Alliance, certify that on September 4, 2024, I electronically filed the foregoing with the Clerk of the Court using the *ECF* system that sent notification of such filing to all counsel of record.

/s/ Amanda Alexander
AMANDA ALEXANDER